

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

STARBUCKS CORPORATION,

Employer

and

WORKERS UNITED,

Petitioner

Case No. 03-RC-294186

**STARBUCKS CORPORATION'S OFFER OF PROOF
ON OBJECTIONS TO CONDUCT OF THE ELECTION**

Pursuant to the Rules and Regulations of the National Labor Relations Board ("NLRB"), including Section 102.69 and 102.66(c), Starbucks Corporation ("Starbucks" or "Employer") files this Offer of Proof in Support of its Objections to the Conduct of the Election in connection with the mail ballot election in Case No. 03-RC-294186.

The Employer presents the following offers of proof with respect to its Objections. The Employer identifies the documents it would produce and witnesses it would call to testify about the issues raised in its Objections and summarizes their testimony herein. The evidence establishes Region 3 personnel's misconduct denied Starbucks' partners their Section 7 rights to a fair, accurate, and secret election on the issue of union representation.

Region 3's objectionable misconduct includes the following:

OBJECTION 1

Region 3 personnel engaged in election misconduct by failing to mail ballots in accordance with the timing set forth in the D&DE.

The Employer will present evidence through multiple Starbucks partners including (b) (6), (b) (7) [REDACTED] that they either never received ballots or did not timely receive their ballots. The testimony will confirm the Region failed to timely mail out all ballots, or mail out replacement ballots, and undermined election integrity.

OBJECTION 2

Region 3 personnel engaged in election misconduct by failing to extend the ballot return date to permit the individuals who did not timely receive ballots time to complete them, and return them in order to have their votes counted in the election.

The Employer will present evidence through Employer's counsel and Region 3 personnel concerning the Region's failure to postpone the ballot count and extend the ballot return date as requested by Starbucks to ensure all voters had a reasonable opportunity to vote. Witnesses will testify that, after learning that multiple partners, including (b) (6), (b) (7)(C) [REDACTED], had not received their ballots, Starbucks requested the Region postpone the ballot count to guarantee the voters had a reasonable amount of time to receive their ballots and return them. This evidence and testimony will show that the Region's failure to extend the time to receive ballots disenfranchised eligible voters who had made numerous attempts to obtain replacement ballots, and undermined the integrity of the election.

OBJECTION 3

Region 3 personnel engaged in election misconduct at the virtual ballot count by revealing the name of an individual voter to a public audience, including members of the news media, when explaining the ballot counting process.

The Employer will present evidence through Employer's counsel and Region 3 personnel concerning the Region's actions during the ballot count on June 16, 2022, when Board Agent Michael Dahlheimer revealed the ballot of (b) (6), (b) (7)(C).

At the ballot count conducted via Zoom video conferencing, when explaining to the parties and the public in attendance how the Region would conduct the count, Mr. Dahlheimer took the ballot of (b) (6), (b) (7)(C) and showed it to everyone in attendance. Only after counsel for the Employer objected, did Mr. Dahlheimer agree to conduct challenges out of public view. By deanonymizing an eligible voter who cast a ballot in the election, Region 3 personnel potentially chilled voter willingness to vote in future elections and undermined election integrity.

OBJECTION 4

Region 3 personnel engaged in election misconduct by refusing to provide an eligible voter with a ballot when (b) (6) personally appeared at the Region's Buffalo, New York office.

The Employer will provide testimony from Starbucks partners and Region 3 personnel that three Starbucks partners went to Region 3's office in person on June 14, 2022 to request that the Region provide (b) (6), (b) (7)(C) with a ballot as (b) (6) still had not received (b) (6) ballot and wanted to vote in the election. After attempting to make contact with Regional personnel for over one hour, calling and knocking on the door, Union counsel (contacted by the Starbucks partners) called Mr. Dahlheimer. Mr. Dahlheimer then came to speak with (b) (6), (b) (7)(C) and the other Starbucks partners who had come to support (b) (6), (b) (7)(C). Mr. Dalheimer refused to provide a ballot to (b) (6), (b) (7)(C), informing

the partners that that the “office was not a polling site” and that “the election was a mail ballot election.” He further informed (b) (6), (b) (7)(C) that he would not provide (b) (6), (b) (7)(C) with a duplicate ballot and that the Employer would “have to issue challenges and/or objections.”

Based upon each of the foregoing Objections, the Employer respectfully submits that the election results must be set aside and a re-run election conducted. If the Regional Director does not order a re-run election administratively, the Employer requests a hearing in which to present testimonial and documentary evidence in support of its Objections.

Dated: June 24, 2022

Respectfully submitted,

LITTLER MENDELSON, P.C.

/s/ Alan I. Model

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CERTIFICATE OF SERVICE

I certify that the foregoing *EMPLOYER'S OFFER OF PROOF ON OBJECTIONS TO CONDUCT OF THE ELECTION* was e-filed on June 24, 2022, through the Board's website and served as follows:

| | |
|--|-------------------|
| Linda M. Leslie, Regional Director National Labor Relations Board, Region 3 Niagara Center Building 130 S. Elmwood Ave., Suite 630 Buffalo, NY 14202 | VIA NLRB E-FILING |
| Jessica Cacaccio, Field Examiner National Labor Relations Board, Region 3 Niagara Center Building 130 S. Elmwood Ave., Suite 630 Buffalo, NY 14202 | VIA NLRB E-FILING |

By: /s/ Alan I. Model
Alan I. Model

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

STARBUCKS CORPORATION,

Employer

and

WORKERS UNITED,

Petitioner

Case No. 03-RC-294186

**STARBUCKS CORPORATION’S OBJECTIONS
TO CONDUCT OF THE ELECTION**

Pursuant to the Rules and Regulations of the National Labor Relations Board (“NLRB”), including Section 102.69, Starbucks Corporation (“Starbucks” or “Employer”) files the following Objections to Conduct of the Election in connection with the mail ballot election in Case No. 03-RC-294186.

In response to Workers United’s (“Union”) representation petition in Case No. 03-RC-294186, and following a hearing on May 6, 2022 before the Region, the Regional Director issued a Decision and Direction of Election (“D&DE”). The D&DE provided for an election for a single-location unit located at the Employer’s store at 3015 Niagara Falls Boulevard, Amherst, New York. The D&DE provided for a mail ballot election. Specifically, the details of that mail ballot election provided that ballots would be mailed out on May 25, 2022 by 5:00 p.m. Voters were required to return their mail ballots to the Region’s office by close of business on Wednesday, June 15, 2022. Finally, the D&DE ordered that the ballot count would be conducted on June 16, 2022 via video conference.

On the afternoon of June 15, 2022—the day prior to the ballot count—Starbucks learned that at least three eligible voters had not received their ballots. Notably, one of those voters went to Region 3’s Buffalo, New York office with two other partners in the hopes of obtaining a ballot or learning why that partner did not ultimately receive one. A Region 3 Board Agent, believed to be Michael Dahlheimer, ultimately came out of the office—after they had waited for approximately one hour—to discuss the ballot issue and informed them that he could not provide a ballot to them. The Board Agent did not provide the partner with a ballot and told them that Starbucks would have to make an objection.

Further, unbeknownst to the Employer until that time, the Union and its agents had been communicating *ex parte* with apparently the same Board Agent in Region 3’s Buffalo office seeking to request ballots on behalf of certain voters. It was only after these communications that the Board Agent finally decided to meet with the partners outside of the Region’s office.

Counsel for the Employer emailed Mr. Dahlheimer, the Board Agent running the election in this matter, the night prior to the ballot count regarding what it had learned and requested that the Region postpone the count, explaining:

Starbucks has received reports from numerous partners that they did not timely receive their ballots for this election. The count is currently scheduled for tomorrow. These partners have told Starbucks that they repeatedly called the NLRB requesting new ballots, and still have not received them. Additionally, I understand that some Starbucks partners went to the Buffalo office in person today to request ballots but were told that Starbucks would simply have to challenge/object and they could not be provided with ballots. I understand that Union counsel is also aware of these issues, as these partners were in contact with the Union’s counsel while at the NLRB’s office.

Because it appears that multiple partners did not timely receive their ballots, despite numerous efforts to obtain replacement ballots, we are asking that this ballot count be postponed. We would suggest a postponement of at least three weeks, so these affected partners have

sufficient time to receive replacement ballots and return them. As always, it is our desire to ensure that every partner who wishes to have the opportunity to vote be permitted a sufficient opportunity to do so.

Mr. Dahlheimer responded by emailing both counsel for Employer and Petitioner the next morning shortly before the ballot count and stating that only one partner had appeared at the Region's offices, as opposed to the three who were actually present. Specifically, Mr. Dahlheimer emailed the parties and explained, in pertinent part:

The Region has looked into the claims proffered in Employer Counsel's email last evening. Region 3 has found no evidence to support the claims that Starbucks' employees at the East Robinson store contacted our offices and requested mail ballots.

In respect to the aspect of this email that references an employee showing up at our office yesterday, I can confirm that one person claiming to be a Starbucks' employee arrived at our office at approximately 4:00 p.m. yesterday afternoon and, for the first time that afternoon, left a message on the Region's voicemailbox. The Regional Director's May 19, 2022 Decision and Direction of Election orders a mail ballot election. The Decision and Direction of election does not accommodate in-person balloting and the Region 3 office is not a polling place. Accordingly, [REDACTED] request to vote in-person and for the Region to generate a ballot kit on-demand is not a valid request.

Various additional irregularities took place during the ballot count calling into question the integrity of the election. Mr. Dalheimer was initially going to deanonymize the ballot process by conducting challenges in view of the public. When explaining this process, he revealed the name of an individual partner who mailed in a ballot in the election. Eventually, Mr. Dalheimer consulted with the Regional Director and decided to conduct the challenges out of public view. The challenges were then conducted in view of counsel for the parties.

Following the challenges section of the count, Mr. Dahlheimer reconvened the public to conduct the count where, of 32 voters on the eligibility list, the Region received *only 12 ballots*.

The Region voided one of the 12 ballots for lack of a signature on the exterior envelope and neither the Union nor Employer challenged the voided ballot. The resulting tally of ballots was 7 votes for Petitioner and 4 votes against Petitioner. No ballots were challenged by either side.

Region 3's conduct of the election deprived Starbucks' partners of their Section 7 rights to vote on the issue of union representation.

Region 3's objectionable conduct includes the following:

OBJECTION 1

Region 3 personnel engaged in election misconduct by failing to mail ballots in accordance with the timing set forth in the D&DE.

OBJECTION 2

Region 3 personnel engaged in election misconduct by failing to extend the ballot return date to permit the individuals who did not timely receive ballots time to complete them, and return them in order to have their votes counted in the election.

OBJECTION 3

Region 3 personnel engaged in election misconduct at the virtual ballot count by revealing the name of an individual voter to a public audience, including members of the news media, when explaining the ballot counting process.

OBJECTION 4

Region 3 personnel engaged in election misconduct by refusing to provide an eligible voter with a ballot when he personally appeared at the Region's Buffalo, New York office.

Based upon each of the foregoing Objections, the Employer respectfully submits that the election results must be set aside and a re-run election conducted. If the Regional Director does

not order a re-run election administratively, the Employer requests a hearing in which to present testimonial and documentary evidence in support of its Objections.

Moreover, given Region 3's prior misconduct in conducting elections involving these same parties in Cases 03-RC-285929 and 03-RC-289801, it is requested that another Regional office investigate the instant Objections. It is plain that Region 3 should not be permitted to conduct an investigation into its own alleged misconduct and further call into questions the integrity of NLRB elections conducted by Region 3.

Dated: June 24, 2022

Respectfully submitted,

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/s/ Alan I. Model

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CERTIFICATE OF SERVICE

I certify that the foregoing *EMPLOYER'S OBJECTIONS TO CONDUCT OF THE ELECTION* was e-filed on June 24, 2022, through the Board's website and served as follows:

| | |
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| Linda M. Leslie, Regional Director National Labor Relations Board, Region 3 Niagara Center Building 130 S. Elmwood Ave., Suite 630 Buffalo, NY 14202 | VIA NLRB E-FILING |
| Jessica Cacaccio, Field Examiner National Labor Relations Board, Region 3 Niagara Center Building 130 S. Elmwood Ave., Suite 630 Buffalo, NY 14202 | VIA NLRB E-FILING |
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By: /s/ Alan I. Model
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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

STARBUCKS CORPORATION

Employer

and

Case 03-RC-294186

WORKERS UNITED

Petitioner

**DECISION AND ORDER OVERRULING OBJECTIONS
AND ISSUING CERTIFICATION OF REPRESENTATIVE**

Based on a petition filed on April 18, 2022,¹ and pursuant to a Decision and Direction of Election, an election was conducted by mail to determine whether a unit of employees of Starbucks Corporation (the Employer) wish to be represented for purposes of collective bargaining by Workers United (the Petitioner). That voting unit consists of:

All full-time and regular part-time Baristas and Shift Supervisors employed by the Employer at its store located at 3015 Niagara Falls Boulevard, Amherst, New York 14228, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.

The Notice of Election issued in conjunction with the Decision and Direction of Election provided as follows regarding the election timeline and balloting procedures:

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 5:00 p.m. on Wednesday, May 25, 2022, ballots will be mailed to voters from the National Labor Relations Board, Region 03, 130 S Elmwood Ave Ste 630, Buffalo, NY 14202-2465. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Wednesday, June 1, 2022, should communicate immediately with the National Labor Relations Board by either calling the Region 03 Office at (716)551-4931 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

¹ All dates hereinafter are in 2022 unless otherwise indicated.

All ballots will be commingled and counted at the Region 03 Office on Thursday, June 16, 2022 at 1:00 p.m. In order to be valid and counted, the returned ballots must be received in the Region 03 Office prior to the counting of the ballots.

The tally of ballots prepared on June 16 shows that of approximately 32 eligible voters, 7 votes were cast for and 4 votes were cast against the Petitioner, with no challenged ballots. There was also one ballot ruled void by the Board agent conducting the count.

On June 24, the Employer timely filed four objections to the conduct of the election, accompanied by an offer of proof. A copy of the Employer's objections is attached to this Order. Based on an administrative investigation of the Employer's objections and its accompanying offer of proof, I have concluded that there are no substantial and material issues of fact which would necessitate a hearing. See *Care Enterprises, Inc.*, 306 NLRB 491, 491 fn. 2 (1992). I also have concluded that the Employer's objections are without merit. I therefore am overruling them in their entirety and am issuing a Certification of Representative.

THE EMPLOYER'S OBJECTIONS

The Employer's objections are as follows:

Objection 1: Region 3 personnel engaged in election misconduct by failing to timely mail ballots in accordance with the timing set forth in the D&DE.

Objection 2: Region 3 personnel engaged in election misconduct by failing to extend the ballot return date to permit the individuals who did not timely receive ballots time to complete them, and return them in order to have their votes counted in the election.

Objection 3: Region 3 personnel engaged in election misconduct at the virtual ballot count by revealing the name of an individual voter to a public audience, including members of the news media, when explaining the ballot counting process.

Objection 4: Region 3 personnel engaged in election misconduct by refusing to provide an eligible voter with a ballot when he personally appeared at the Region's Buffalo, New York office.

THE APPLICABLE BURDEN

The applicable legal principles governing election objections are as follows, from the Board's decision in *Safeway, Inc.*, 338 NLRB 525, 526 (2002):

It is well settled that "[r]epresentation elections are not lightly set aside." *NLRB v. Hood Furniture Mfg. Co.*, 941 F.2d 325, 328 (5th Cir. 1991) (citing *NLRB v. Monroe Auto Equipment Co.*, 470 F.2d 1329, 1333 (5th Cir. 1972), cert. denied 412 U.S. 928 (1973)). Thus, "[t]here is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees." *NLRB v. Hood Furniture Mfg. Co.*, supra, 941 F.2d at 328. Accordingly, "the burden of proof on parties seeking to have a Board-supervised election set aside is a 'heavy one.'" *Kux Mfg. Co. v. NLRB*, 890 F.2d

804, 808 (6th Cir. 1989) (quoting *Harlan #4 Coal Co. v. NLRB*, 490 F.2d 117, 120 (6th Cir. 1974), cert. denied 416 U.S. 986 (1974)). The objecting party must show, inter alia, that the conduct in question affected employees in the voting unit. *Avante at Boca Raton, Inc.*, 323 NLRB 555, 560 (1997) (overruling employer's objection where no evidence unit employees knew of alleged coercive incident). See generally *Antioch Rock & Ready Mix*, 327 NLRB 1091, 1092 (1999).

In cases governing alleged misconduct by Board employees, the proper standard is “whether the manner in which the election was conducted raises a reasonable doubt as to the fairness and validity of the election.” *Polymers, Inc.*, 174 NLRB 282, 282 (1969), enf’d. 414 F.2d 999 (2d Cir. 1969), cert. denied 396 U.S. 1010 (1970).

DISCUSSION AND ANALYSIS

Objection 1: Region 3 personnel engaged in election misconduct by failing to timely mail ballots in accordance with the timing set forth in the D&DE.

In its offer of proof, the Employer contends that three voters assert that they never received ballots or failed to timely receive their ballots. The Region’s administrative investigation demonstrated that on May 25, ballot kits were mailed to all individuals on the Voter list submitted by the Employer, with the Region utilizing the addresses provided on said list to mail voters their respective kits.

As noted above, the Notice of Election states the following regarding employees’ obligations in the event that they do not receive ballot kits from the Region:

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Wednesday, June 1, 2022, should communicate immediately with the National Labor Relations Board by either calling the Region 03 Office at (716)551-4931 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

The Region’s investigation determined that none of the three voters whom the Employer contends did not receive ballot kits contacted the Region by the stated deadline. Indeed, the Region’s records reflect that only one of the three named employees contacted the Region at any point prior to the election. The Region’s investigation further disclosed that the third voter’s sole attempt to secure a ballot kit was via an unannounced visit to the Regional office on June 15, the day before the count.²

The Board has long held that “election results should be certified where all eligible voters have an adequate opportunity to participate in the election, notwithstanding low voter participation.” *Lemco Construction, Inc.*, 283 NLRB 459, 460 (1987). In this case, the Region’s investigation disclosed no evidence that the voters named in the Employer’s offer of proof were not mailed ballots, particularly given that other employees on the Voter list undisputedly received ballots in time to vote in this election.

² The Region’s actions in this regard are the subject of Objection 4 and will be discussed in further detail below.

Further, the Notice of Election clearly set forth the process by which employees who did not receive ballots could request duplicate kits, the deadline for which was June 1. The Employer's offer of proof contains no contention that any of the three allegedly disenfranchised employees contacted the Regional office by the stated deadline. Indeed, the Employer contends that only one of the three contacted the Region at all, and that this voter did so well after the deadline for such a request had passed.

Under the circumstances, I conclude that the Employer's offer of proof is insufficient to support Objection 1. It is therefore overruled.

Objection 2: Region 3 personnel engaged in election misconduct by failing to extend the ballot return date to permit the individuals who did not timely receive ballots time to complete them, and return them in order to have their votes counted in the election.

The Employer's objection relates to its June 16 request that the Region extend the balloting period by three weeks. In its June 16 request, submitted by email by the Employer's counsel to the Board agent scheduled to conduct the count on June 16, the Employer asserted the following:

Starbucks has received reports from numerous partners that they did not timely receive their ballots for this election. The count is currently scheduled for tomorrow. These partners have told Starbucks that they repeatedly called the NLRB requesting new ballots, and still have not received them. Additionally, I understand that some Starbucks partners went to the Buffalo office in person today to request ballots but were told that Starbucks would simply have to challenge/object and they could not be provided with ballots. I understand that Union counsel is also aware of these issues, as these partners were in contact with the Union's counsel while at the NLRB's office.

Because it appears that multiple partners did not timely receive their ballots, despite numerous efforts to obtain replacement ballots, we are asking that this ballot count be postponed. We would suggest a postponement of at least three weeks, so these affected partners have sufficient time to receive replacement ballots and return them. As always, it is our desire to ensure that every partner who wishes to have the opportunity to vote be permitted a sufficient opportunity to do so.

The Region, via an email from the Board agent to whom the Employer's email was addressed, denied the Employer's request to reschedule the ballot count. The count proceeded as scheduled.

The Employer contends that the Region's decision to reject the Employer's request to extend the ballot return date was improper.³ In so doing, the Employer cites the relatively small number of ballots returned as a portion of the larger unit as evidence that the Region should have acceded to the Employer's request. However, the Board has repeatedly held that it "does not

³ Notably, the Employer's offer of proof does not purport to provide any evidence or witnesses to testify about "repeatedly call[ing] the NLRB requesting new ballots." The only evidence proffered by the Employer regarding such matters is related to a voter's unannounced appearance at the Regional office on June 15 that forms the basis of Objection 4.

overturn elections simply because of low turnout.” *CenTrio Energy South, LLC*, 371 NLRB No. 94, slip op. at 1 (2022), citing *Lemco Construction Co.*, 283 NLRB at 460. Indeed, the Board stated the following in *Lemco Construction*, *supra*:

The fundamental purpose of a Board election is to provide employees with a meaningful opportunity to express their sentiments concerning representation for the purpose of collective bargaining. The law does not compel any employee to vote, and the law should not permit that right, to refrain from voting, to defeat an otherwise valid election. As the Board observed in *Versail Mfg.*, 212 NLRB 592, 593 (1974), “[t]here must be some degree of finality to the results of an election, and there are strong policy considerations favoring prompt completion of representation proceedings.” In political elections, voters who absent themselves from the polls are presumed to assent to the will of the majority of those voting. Similarly, when a Board election is met with indifference, it must be assumed that the majority eligible employees did not wish to participate in the selection of a bargaining representative and are content to be bound by the results obtained without their participation.

In this case, the Region provided for a three-week balloting period and clearly set forth the procedure to be followed in the Notice of Election that was timely furnished for posting.⁴ This included a method for requesting a duplicate ballot kit in the event of non-receipt or spoilage as well as a clear enunciation of the date by which employees should return their ballots.

The Region was under no obligation to extend the deadline for receipt of mail ballots given the clearly stated parameters of the election as set forth in the Notice of Election. See, e.g., *Windy City Cannabis*, 371 NLRB No. 93, slip op. at 3 (2022) (no abuse of discretion to deny request to extend balloting period based on small number of potentially unreturned ballots). The three-week period for balloting, in conjunction with the stated option to request a duplicate ballot via telephone two weeks prior to the end of the voting period, amply provided the “meaningful opportunity” to vote contemplated by the Board in *Lemco Construction*, *supra*.⁵ In *CenTrio Energy*, 371 NLRB at slip op. at 2, a case in which a party contended that low turnout based on mail delivery issues constituted objectionable conduct, the Board stated that “[w]hile the late arrival of ballots due to mail service delays is unfortunate, we note that these issues were not caused by conduct of the Board or either of the parties and we find that the Board’s interest in finality outweighs any disenfranchisement concerns in this case.”

The same conclusion is warranted here. The Employer’s offer of proof is insufficient to establish that the decision to deny its request for a three-week extension of the polling period was objectionable. As such, I am overruling Objection 2.

⁴ The Employer’s objections do not contend that the Notice of Election was not posted for the requisite period of time or that the Notice of Election was somehow incomplete or faulty in any regard.

⁵ The Region’s investigation demonstrated that only one additional ballot was received by the Region since the tally of ballots took place on June 16. This ballot was postmarked July 5 and received by the Region on July 8, which is beyond the three-week extension proposed by the Employer. It also would not change the results of the election.

Objection 3: Region 3 personnel engaged in election misconduct at the virtual ballot count by revealing the name of an individual voter to a public audience, including members of the news media, when explaining the ballot counting process.

The Employer's offer of proof contends that, at the outset of the virtual ballot count, the Board agent conducting the election named one of the voters who had submitted a ballot to an audience that included members of the press. The Employer claims that "deanonymizing" this voter will chill future employees' willingness to participate in Board elections. Importantly, the Employer does not contend that the Board agent revealed the ballot of this voter or otherwise compromised the secrecy of the named voter's ballot. Even assuming this conduct was somehow improper, the Board has held that "where...the alleged misconduct is the Board agent's failure to ensure the secrecy of voter balloting, the Board will not set aside the election...absent evidence that someone witnessed how a voter marked his or her ballot." *American Medical Response*, 356 NLRB 199, 199 (2010), enfd. 477 Fed.Appx. 743 (D.C. Cir. 2012), citing *Avante at Boca Raton*, 323 NLRB 555, 558 (1997).

Moreover, the Employer has presented no evidence that the inadvertent disclosure of the name of a voter in this election prejudiced the results of an election for which balloting had already concluded. Moreover, the Employer's contentions that future elections will be tainted by this incident are speculative at best and fall far short of type of conduct that "tends to destroy confidence in the Board's election process or could reasonably be interpreted as impairing the election standards the Board seeks to maintain." *Sonoma Health Care Center*, 342 NLRB 933, 933 (2004), citing *Athbro Precision Engineering Corp.*, 168 NLRB 966 (1967), vacated sub nom. *Electrical Workers v. NLRB*, 67 LRRM 2361 (D.D.C. 1968), acquiesced in 171 NLRB 21 (1968), enfd. 423 F.2d 573 (1st Cir. 1970). Indeed, the naming of a single voter falls well short of the "intemperate and inappropriate" remarks by a Board agent in *Sonoma Health Care Center* that were nonetheless insufficient to constitute objectionable conduct.

Accordingly, I am overruling Objection 3.

Objection 4: Region 3 personnel engaged in election misconduct by refusing to provide an eligible voter with a ballot when he personally appeared at the Region's Buffalo, New York office.

The Employer contends that the Region's refusal to furnish a voter with a ballot kit upon that voter's appearance at the Regional office on June 15 constituted objectionable conduct. The Region's investigation confirmed that a prospective voter appeared unannounced in the Regional office at 4:00 p.m. on June 15, spoke in person to the Information Officer on duty and was not provided with a duplicate ballot kit.

However, I conclude that the Region was not able or obligated to accede to this request and the failure to furnish said voter with the requested ballot kit was therefore not objectionable. As discussed above, the Notice of Election issued by the Region in this matter clearly set forth the procedure and deadline for requesting duplicate ballot kits. The method of contact specified in the Notice of Election contemplated telephone contact with either the Regional office's number or to the NLRB's nationwide telephone number. The Notice of Election was similarly unequivocal in

stating that the deadline for requesting a duplicate ballot kit was June 1, two full weeks prior to the voter's appearance at the Regional office.

It is true that duplicate ballot requests received after the deadline for such should still be accommodated "if sufficient time remains" prior to a vote count. See Section 11336.4(b) of the Board's Casehandling Manual (Part Two), Representation Proceedings. See also *XPO Logistics Freight, Inc.*, 370 NLRB No. 99, slip op. at 2 (2021). The Region's investigation disclosed that at the time the voter appeared at the Regional office, it was not possible to provide a ballot kit to the voter. Given that this visit occurred the day before the vote count, there was also insufficient time to create a mail ballot, mail it to the voter, and have it returned to the Regional office in sufficient time to be counted the following day. As such, Regional personnel's conduct was not objectionable.

For these reasons, I conclude that the Region's conduct regarding this objection was not objectionable and overrule Objection 4.⁶

CONCLUSION AND ORDER

I have concluded that the objections do not raise substantial and material issues of fact that necessitate a hearing. I also have concluded that the Employer's objections are without merit. Accordingly, I hereby overrule the Employer's objections in their entirety.

CERTIFICATION OF REPRESENTATIVE

Having determined that there were no valid objections to the election in this matter, and as authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots has been cast for

Workers United

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Unit: All full-time and regular part-time Baristas and Shift Supervisors employed by the Employer at its store located at 3015 Niagara Falls Boulevard, Amherst, New York 14228, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision, which may be combined with a request for review of the regional director's decision to direct an election as provided in Sections 102.67(c) and 102.69(c)(2), if not previously filed. The request for review must conform to

⁶ Even assuming, *arguendo*, that the Region's failure to furnish this voter with a ballot kit was problematic, the scope of such conduct was limited to one voter. Given that the Petitioner prevailed in this election by a 7-4 margin, the failure of this voter to cast a ballot was not determinative.

the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and may be filed at any time following this decision until 10 business days after a final disposition of the proceeding by the regional director. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: 7/14/2022

/s/LINDA M. LESLIE

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